IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

AND
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 538 of 2005

Between:

M/s. Klen and Marshalls Manufacturers & Exporters Private Limited, Having Its Branch Office at 9-1-83 & 84, Amarchand Sharma Complex, S.P. Road, Secunderabad, Rep. by its Authorised Signatory

R.Vijay Kumar

..... PETITIONER

AND

1. The Commissioner, Commercial Tax Department,
   Nampally, Hyderabad.

2. The Commercial Tax Officer, Khairatabad Circle, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus by declaring the impugned provisional assessment order for the year 2004-2005 (from April 2004 to November 2004) dated 11-01-2005 passed by the 2nd respondent as violative of principles of natural justice and consequently set-aside the same.

Counsel for the Petitioner: MR.B.CHANDRASEN REDDY

Counsel for the Respondents: MR.K.RAJI REDDY

SPL. GP FOR COMMERCIAL TAXES

The Court made the following at the admission stage :

WRIT PETITION NO.538 OF 2005

O R D E R

(Per Sri Justice M.H.S.Ansari)

Instant writ petition is filed questioning the provisional assessment order for the year 2004-2005 passed by the Commercial Tax Officer-2nd respondent herein. The sole ground on which the instant writ petition is founded upon is violation of principles of natural justice.

From the impugned order, we noticed that since 1999-2000 petitioner's assessments are completed on provisional basis periodically as the petitioner dealer is not filing its returns and not paying the tax under Section 13 of the APGST Act. For the assessment year in question, the learned Commercial Tax Officer, issued show-cause notice granting time up to 31.01.2005 for filing its objections. The petitioner, however, requested for time to file their

objections and the same was granted up to 06.01.2005. However, on 05.01.2005 petitioner again filed a letter seeking extension of time to file objections on the ground that the tax consultant is out of station. The said request was considered by the learned C.T.O. and was found not acceptable and therefore rejected. In the impugned order, we further found that the petitioner has been assessed provisionally for the earlier assessment years taking into consideration the objections filed by them and that the appeals against the said orders had also been filed by the petitioner before the 1st appellate authority, which were rejected and appeals for the assessment years 1999-2000 are pending disposal before the learned Sales Tax Appellate Tribunal.

We find that the ground of violation of principles of natural justice, in the circumstances, has not been made out. Petitioner has been afforded opportunity and extension has also been granted as prayed for. Petitioner did not avail of the said opportunity of filing its objections and it cannot, therefore, be said that the impugned order is vitiated on the ground of violation of principles of natural justice. The impugned order, admittedly, is an appealable order under Section 19 of the APGST Act and, therefore, when a satisfactory solution is provided under the statute itself, we do not consider it appropriate to enter into the merits of the contentions, leaving it open to the petitioner to avail of such efficacious alternative remedy as provided under the Act, if so advised.

However, as a request is made before us by the learned counsel for the petitioner that the appeals pending before the STAT have not been disposed of causing hardship to the petitioner, the only observation we make in this behalf is that if the petitioner requests the learned STAT to dispose of the appeals before it expeditiously, such request may be considered by the STAT in accordance with law. We are not making any positive directions for the reason that learned STAT has not been impleaded as a respondent in the writ petition.

In the result, writ petition is dismissed at admission stage without going into the merits and contentions raised. It is clarified that all questions are left open. Liberty is reserved to the petitioner to avail of such efficacious alternative remedy as may be open to it in law. No order as to costs.

JUSTICE M.H.S.ANSARI

JUSTICE T.CH.SURYA RAO

28th January, 2005

PGS

To

1. The Commissioner, Commercial Tax Department,
   Nampally, Hyderabad.

2. The Commercial Tax Officer, Khairatabad Circle, Hyderabad.

3. Two CCs to Spl. G.P. for Commercial Taxes, High Court of A.P.,

Hyderabad (OUT).

4. Two CD copies.

THE HONOURABLE SRI JUSTICE

M.H.S.ANSARI

AND

THE HONOURABLE SRI JUSTICE

T.CH.SURYA RAO

WRIT PETITION NO.538 OF 2005

(Per Sri Justice M.H.S.Ansari)

28th January, 2005